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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,584	12/31/2003	Daryl Carvis Cromer	RPS920030219US1(4035)	2711

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EXAMINER	
TIV, BACKHEAN	

ART UNIT	PAPER NUMBER
2151	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/749,584	CROMER ET AL.	
	Examiner	Art Unit	
	BACKHEAN TIV	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *RCE 8/5/08*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Detailed Action

Claims 1-35 are pending in this application. This is a response the RCE filed on 8/5/08. No amendments were made to the claims. This is a **First Action FINAL**.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3,6,8,9-15,19-24,28-31,35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,606,709 issued to Connery et al.(Connery) in view of US Patent 6,732,267 issued to Wu et al.(Wu).

As per claim 1, Connery teaches a method comprising: receiving, at a client of a computer system a modified wake-on-LAN packet via a network receive buffer on the client(col.2, lines 5-15), the modified wake-on-LAN packet comprising executable code(col.2, lines 5-15, col.6, lines 1-25).

Connery however does not explicitly teach storing the executable code in memory associated with the network receive buffer; retrieving the executable code from the memory by an action of BIOS associated with the client; and processing the executable code using the BIOS.

Wu teaches storing the executable code in memory associated with the network receive buffer(Abstract, col.2, lines 19-36); retrieving the executable

code from the memory by an action of BIOS associated with the client; and processing the executable code using the BIOS(Abstract, col.2, lines 19-36).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Connery to include storing the executable code in memory associated with the network receive buffer; retrieving the executable code from the memory by an action of BIOS associated with the client; and processing the executable code using the BIOS as taught by Wu in order to update a BIOS on a remote computer system(Wu, col.1, lines5-10).

One ordinary skill in the art would have been motivated to combine the teachings of Connery and Wu in order to to update a BIOS on a remote computer system(Wu, col.1, lines5-10).

As per claim 2, the method of claim 1, further comprising: adding the executable code to a wake-on-LAN packet to yield the modified wake-on-LAN packet and transmitting the modified wake-on-LAN packet to the client(Connery, col.2, lines 5-15).

As per claim 3, the method of claim 1, further comprising verifying the modified wake-on-LAN packet using the BIOS(Connery, Fig.6).

As per claim 6, the method of claim 1, further comprising modifying the BIOS with a set of instructions for the method prior to receiving the modified wake-on-LAN packet(Wu, Abstract).

As per claim 8, the method of claim 1, wherein the receiving comprises receiving the modified wake-on LAN packet over a network(Connery, Abstract).

As per claim 19, the system of claim 12, wherein the network receive buffer comprises the network receive buffer on a NIC card having wake-on-LAN support capability(Connery, Fig.1-6).

As per claims 9-15,20-24,28-31,35 do not teach or further define over the limitations in claims 1-3,6,8,19. Therefore claims 9-15,20-24,28-31,35 are rejected for the same reasons set forth above.

Claims 4,5,7,16-18, 25-27, 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,606,709 issued to Connery et al.(Connery) in view of US Patent 6,732,267 issued to Wu et al.(Wu) in further view of 6,542,979 issued to Eckardt.

Connery in view of Wu does not explicitly teach as per claim 4, the method of claim 1, further comprising storing the retrieved executable code to a PARTIES partition of a hard drive associated with the client.

Eckardt teaches storing the retrieved executable code to a PARTIES partition of a hard drive associated with the client(Abstract, col.3, lines 40-61).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Connery in view of Wu to include storing the retrieved executable code to a PARTIES partition of a hard drive associated with the client as taught by Eckardt in order to boot from either the standard partition or non-standard partition(col.1, lines 60-65).

One ordinary skill in the art would have been motivated to combine the teachings of Connery, Wu and Eckardt in order to boot from either the standard partition or non-standard partition(col.1, lines 60-65).

As per claim 5, the method of claim 4, further comprising booting the client from the PARTIES partition using the BIOS prior to the processing of the executable code, wherein the processing occurs through use of an application stored on the PARTIES partition(Eckardt, Abstract, col.3, lines 40-61). Motivation to combine set forth in claim 4.

As per claim 7, the method of claim 1, wherein the processing of the executable code comprises processing a ROM BIOS extension(Eckardt, col.3, lines 55-62). Motivation to combine set forth in claim 4.

As per claims 16-18, 25-27, 32-34, do not teach or further define over the limitations in claims 4,5,7. Therefore claims 16-18, 25-27, 32-34 are rejected for the same reasons set forth above.

Response to Arguments

Applicant's arguments, pertaining to the art, filed 8/5/08 have been fully considered but they are not persuasive.

The applicant argues in substance,

As per claims 1,9,12,20,23,28, Connery in view of Wu does not teach, storing the executable code in memory associated with the network receive buffer; retrieving the executable code from the memory by an action of BIOS associated with the client; and processing the executable code using the BIOS,

page 2-6, in particular the applicant has argued that Connery in view of Wu does not teach, “executable code”.

In reply); MPEP 2111.01, IV states:

> IV. < **APPLICANT MAY BE OWN LEXICOGRAPHER**
>
> An applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) (inventor may define specific terms used to describe invention, but must do so “with reasonable clarity, deliberateness, and precision” and, if done, must “set out his uncommon definition in some manner within the patent disclosure’ so as to give one of ordinary skill in the art notice of the change” in meaning) (quoting *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88, 21 USPQ2d 1383, 1386 (Fed. Cir. 1992)). Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a “lexicographic vacuum, but in the context of the specification and drawings”). Any special meaning assigned to a term “must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.” *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999) and MPEP § 2173.05(a). The specification should also be relied on for more than just explicit lexicography or clear disavowal of claim scope to determine the meaning of a claim term when applicant acts as his or her own lexicographer; the meaning of a particular claim term may be defined by implication, that is, according to the usage of the term in >the< context in the specification. See *Phillips v. AWH Corp.*, *>415 F.3d 1303<, 75 USPQ2d 1321 (Fed. Cir. 2005) (*en banc*); and *Vitronics Corp. v. Conceptronic Inc.*, 90 F.3d 1576, 1583, 39 USPQ2d 1573, 1577 (Fed. Cir. 1996). Compare *Merck & Co., Inc., v. Teva Pharms. USA, Inc.*, 395 F.3d 1364, 1370, 73 USPQ2d 1641, 1646 (Fed. Cir. 2005), where the court held that patentee failed to redefine the ordinary meaning of “about” to mean “exactly” in clear enough terms to justify the counterintuitive definition of “about.” (“When a patentee acts as his own lexicographer in redefining the meaning of particular claim terms away from their ordinary meaning, he must clearly express that intent in the written description.”).
> See also MPEP § 2173.05(a).

Pertaining to the definition of “executable code", the Office, searched through the applicant's specification to see if the applicant has acted as it's own lexicographer. The applicant has not provided a clear definition for “executable code”, therefore based on , MPEP 2111.01, III, *“Plain Meaning” refers to the ordinary and customary meaning given to the term by those of ordinary skill in the art*, the Office interprets, “executable code” as software in a form that can be run in the computer (see NPL, definition of executable code).

Connery, Abstract, col.2, lines 5-15, teaches Wake On LAN with security features, with includes commands and options such as remote power down, remote reset, remote diagnostics, wake up into boot ROM bypassing password prompts, or other system management and power management commands.

Wu, col.2, Abstract, teaches updating BIOS.

One ordinary skill in the art at the time of the invention would interpret, Connery’s command and Wu’s updates as “executable code”, since commands and updates are being executed by a computer.

Connery, Abstract, col.2, lines 5-15, col.6, lines 1-25, teaches modified wake on LAN packets comprising executable code and further teaches the use of wake on LAN to update programs, by adding commands to the WOL, the Office interprets as the modified WOL.

Wu, col.2, lines 19-36, col.4, lines 17-33, teaches a system BIOS examining an indicator and if a certain flag is set, the BIOS will retrieve an update

BIOS image from a partition, e.g. storage, and update the current BIOS settings and replace it with the new BIOS.

Therefore, Connery in view of Wu teaches storing the executable code in memory associated with the network receive buffer(BIOS update is stored in a partition(storage)); retrieving the executable code from the memory by an action of BIOS associated with the client(retrieving the BIOS update from partition(storage), the BIOS update is interpreted to be the executable code); and processing the executable code using the BIOS(current system BIOS updates to new system BIOS).

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had

been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Backhean Tiv whose telephone number is (571) 272-5654. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. T./
Backhean Tiv
Examiner, Art Unit 2151
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